

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.17.107 and 24.17.121 and the ) PROPOSED AMENDMENT AND  
adoption of NEW RULES I through III ) ADOPTION  
pertaining to prevailing wage rates and )  
districts for public works projects )

TO: All Concerned Persons

1. On September 16, 2013, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 11, 2013, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail [mikesmith@mt.gov](mailto:mikesmith@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The department has determined that there is reasonable necessity to amend and adopt new rules regarding the establishment of prevailing wage districts and the rate-setting methodologies for public work projects in order to implement the provisions of Chapter 373, Laws of 2013 (House Bill 464). As part of the drafting of the proposed rule changes, on June 13, 2013, the department met with and obtained the informal input of various interested parties, including the prime sponsor of HB 464, representatives of labor organizations, representatives of contracting firms and contractor associations, and engineers, regarding the proposed new rules and amendments. Following several hours of in-person discussions with those parties, the department refined the following proposals. While the following proposals may not represent an absolute consensus among all of the interested parties, the department believes that the proposed changes fairly represent a reasonable balance of the competing viewpoints and concerns expressed by the interested parties.

The department considered whether four or five prevailing wage districts should be established in Montana. In determining the number of districts and the counties within them, the department considered: where universities and hospitals were located, commonalities of economies, home bases of major general contractors, urban centers, geography, and size that would generate sufficient data collection. The department presented maps with four districts and with five districts

that met the criteria described above at the June 13, 2013, meeting and took an informal poll of the attendees. Those interested parties voted 10-3 in favor of four districts, and therefore the department is proposing four districts.

The department has considered whether merely amending the existing rules would accomplish the same results. The department believes that the separation of the various categories of prevailing wage projects into separate rules will allow government agencies, contractors, and the public at large a clearer picture of how prevailing wage rates and districts are determined. The department believes that it will be easier for users to look at a rule regarding the specific area of public works contracting (whether building construction services, highway construction services, heavy construction services, or non-construction services), rather than read through a more lengthy rule that addresses all four categories of services. The department notes that the decision to separate the categories was supported by the various interested parties during the informal discussion period.

The department notes that although the rules are being substantially reorganized, the department believes that effect on businesses in complying with the rules will not change significantly compared to the existing rules. The department believes that the proposed changes will not significantly affect the time or recordkeeping an employer uses in responding to the department's annual wage surveys.

This general statement of reasonable necessity applies to all of the following proposed amendments and adoptions, and will be supplemented as appropriate for any given rule change.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.17.107 PREVAILING WAGE DISTRICTS ESTABLISHED

(1) Pursuant to 18-2-411, MCA, the commissioner has established ~~40~~ 4 districts for the purpose of setting the standard prevailing rate of wages for building construction services [New Rule I] ~~(other than heavy construction or highway construction)~~ and nonconstruction services [New Rule II]. Heavy construction services rates [New Rule III] and highway construction services rates (ARM 24.17.121) are set on a statewide basis pursuant to 18-2-414, MCA.

(2) The districts are composed of the following counties:

(a) District 1: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders;

(b) District 2: Mineral, Missoula, and Ravalli; Beaverhead, Broadwater, Deer Lodge, Glacier, Granite, Jefferson, Lewis and Clark, Liberty, Madison, Pondera, Powell, Silver Bow, Teton, and Toole;

(c) District 3: Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow; Blaine, Carbon, Cascade, Chouteau, Fergus, Gallatin, Golden Valley, Hill, Judith Basin, Meagher, Musselshell, Park, Petroleum, Phillips, Stillwater, Sweet Grass, and Wheatland;

(d) ~~District 4: Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole; Big Horn, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, Wibaux, and Yellowstone~~

(e) ~~District 5: Broadwater, Jefferson, Lewis and Clark, and Meagher;~~

(f) ~~District 6: Gallatin, Park, and Sweet Grass;~~

(g) ~~District 7: Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland;~~

(h) ~~District 8: Big Horn, Carbon, Rosebud, Stillwater, Treasure, and Yellowstone;~~

(i) ~~District 9: Daniels, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, and Valley;~~

(j) ~~District 10: Carter, Custer, Dawson, Fallon, Prairie, Powder River, and Wibaux.~~

(3) Districts and their contiguous districts are as follows:

(a) the contiguous district for District 1 is district 2;

(b) the contiguous districts for District 2 are districts 1 and 3;

(c) the contiguous districts for District 3 are districts 2 and 4; and

(d) the contiguous districts for District 4 is district 3.

AUTH: 18-2-431, MCA

IMP: 18-2-411, ~~18-2-414~~, MCA

REASON: There is reasonable necessity to amend the IMP citation to reflect that the rule is being changed to simply identify the prevailing wage districts, and not the establishment of any wage rates.

#### 24.17.121 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS -- HIGHWAY CONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations in ~~each district engaged in highway construction services statewide~~. ~~Except as used in (3) and (4), the term "prevailing rate of wages" includes both wages and fringe benefits.~~ Although the commissioner establishes wage rates and fringe benefit rates, including travel, zone pay, and per-diem allowance rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) ~~The commissioner uses various data sources to determine the standard prevailing rate of wages is based upon the following data sources:~~

(a) ~~with respect to building construction services,~~ The standard prevailing rate of wages may be based upon an annual statewide survey of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by ~~18-2-413~~ 18-2-414, MCA, who are licensed or registered on ~~June 15~~ February 1 of the year in which the survey is being conducted;

(b) ~~with respect to heavy construction services, as provided for by 18-2-414, MCA, the~~ The standard prevailing rate of wages may instead be based upon

applicable federal Davis-Bacon Act rates for highway construction services in effect for Montana on September 1 of that year;

~~(c) with respect to highway construction services, as provided for by 18-2-414, MCA, If, with respect to any given occupation, there is a difference in the standard prevailing rate of wages (including the value of fringe benefits) surveyed for under this section, and the applicable federal Davis-Bacon Act rates in effect statewide for highway construction services in effect for Montana as of on September 1 of that year; and , the commissioner shall adopt the higher of the two as the standard prevailing rate of wages.~~

~~(d) with respect to nonconstruction services, an annual survey of employers pursuant to 18-2-415, MCA, as known to the department as of June 15 of the year in which the survey is being conducted.~~

(3) Based on survey data collected by the department for ~~each district~~ statewide, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated for each occupation will be set established using the following procedure:

(a) If a minimum of ~~five~~ 40 or more workers is are reported for the occupation ~~within the district~~ statewide, and 50 percent or more of those workers receive the same wage, ~~that rate is the district prevailing wage rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district then the statewide surveyed prevailing wage rate for that occupation is the higher of:~~

~~(i) that wage; or~~

~~(ii) the highest applicable collectively bargained rate. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the highest applicable collectively bargained wage rate.~~

(b) If ~~five~~ 40 or more workers are reported for the occupation ~~within the district~~ statewide, but 50 percent of those workers are not paid the same ~~rate~~ wage, ~~the weighted average wage rate, weighted by the number of workers, is the district prevailing wage rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district then the statewide surveyed prevailing wage rate for that occupation is the higher of:~~

~~(i) the weighted average wage; or~~

~~(ii) the highest applicable collectively bargained rate. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the highest applicable collectively bargained wage rate.~~

(c) If less than ~~five~~ 40 workers are reported for the occupation ~~within the district~~ statewide, the ~~district~~ surveyed prevailing wage rate is the highest applicable collectively bargained rate for that occupation ~~in that district~~ statewide.

~~(d) If a collective bargaining agreement does not exist for the occupation in that district, a weighted average wage rate for the district weighted by number of workers will be computed using data submitted from that district and all contiguous districts. Districts and their contiguous districts are as follows:~~

~~(i) District 1 (Flathead, Lincoln, Sanders, and Lake counties): districts 2, 3, 4, and 5.~~

~~(ii) District 2 (Missoula, Ravalli, and Mineral counties): districts 1 and 3.~~

~~(iii) District 3 (Granite, Powell, Deer Lodge, Silver Bow, Madison, and Beaverhead counties): districts 1, 2, 5, and 6.~~

~~(iv) District 4 (Cascade, Choteau, Toole, Liberty, Glacier, Pondera, Teton, Hill, and Blaine counties): districts 1, 5, 7, and 9.~~

~~(v) District 5 (Lewis and Clark, Broadwater, Meagher, and Jefferson counties): districts 1, 3, 4, 6, and 7.~~

~~(vi) District 6 (Gallatin, Park, and Sweet Grass counties): districts 3, 5, 7, and 8.~~

~~(vii) District 7 (Wheatland, Fergus, Musselshell, Petroleum, Golden Valley, and Judith Basin counties): districts 4, 5, 6, 8, and 9.~~

~~(viii) District 8 (Stillwater, Yellowstone, Rosebud, Treasure, Big Horn, and Carbon counties): districts 6, 7, 9, and 10.~~

~~(ix) District 9 (Valley, Phillips, Sheridan, Daniels, Garfield, McCone, Richland, and Roosevelt counties): districts 4, 7, 8, and 10.~~

~~(x) District 10 (Carter, Wibaux, Dawson, Fallon, Prairie, Custer, and Powder River counties): districts 8 and 9~~ less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for highway construction services for the occupation in effect statewide for Montana on September 1 of that year is the prevailing wage rate for that occupation.

~~(e) If contiguous district data do not sum to a minimum of five workers, a statewide weighted average wage rate will be calculated for the occupation.~~

~~(f) If a minimum of five workers is not reported for the occupation in the entire state, no~~ No rate will be established for that an occupation where:

(i) a minimum of 40 workers is not reported statewide;

(ii) a collective bargaining agreement does not exist; and

(iii) a federal Davis-Bacon Act rate for highway construction services has not been established on a statewide basis as of September 1 of that year.

~~(4) Based on survey data collected by the Department of Labor and Industry department, for each district statewide, the commissioner will compile fringe benefit information for a given occupation by district statewide that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be set established for bona fide benefits paid or contributed to approved plans, funds or programs for health insurance, life insurance, pension or retirement, vacations, holidays and sick leave, using the following procedure:~~

~~(a) If a minimum of five 40 or more workers is are reported for the occupation within the district statewide, and 50 percent or more of those workers receive the same dollar value of fringe benefits, that rate is the district prevailing fringe benefit rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district then the statewide surveyed prevailing fringe benefit rate for that occupation is the higher of:~~

(i) that fringe benefit; or

(ii) the highest applicable collectively bargained fringe benefit rate. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the highest applicable collectively bargained rate.

(b) ~~If five 40 or more workers are reported for the occupation within the district statewide, but 50 percent of those workers are not paid the same fringe benefit rate, the weighted average fringe benefit rate, weighted by the number of workers, is the district prevailing fringe benefit rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district the surveyed prevailing fringe benefit rate for that occupation statewide is the higher of:~~

~~(i) the weighted average fringe benefit; or~~

~~(ii) the highest applicable collectively bargained fringe benefit rate. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the highest applicable collectively bargained rate.~~

(c) ~~If less than five 40 workers are reported for the occupation within the district statewide, the district surveyed prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation in that district statewide.~~

~~(d) If a collective bargaining agreement does not exist for the occupation in that district, but a minimum of five workers are reported in the combined contiguous districts, a weighted average fringe benefit rate for the district, weighted by the number of workers, will be computed using data submitted from that district and all contiguous districts. Districts and their contiguous districts are the same as provided by (3)(d) of this rule less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for highway construction services for the occupation in effect statewide for Montana on September 1 of that year is the surveyed prevailing fringe benefit rate for that occupation.~~

~~(e) If contiguous district fringe benefit data do not sum to a minimum of five workers, statewide weighted average fringe benefit rates will be calculated for the No fringe benefit rate will be established for an occupation where:~~

~~(i) a minimum of 40 workers is not reported statewide;~~

~~(ii) a collective bargaining agreement does not exist; and~~

~~(iii) a federal Davis-Bacon Act rate for highway construction services has not been established on a statewide basis as of September 1 of that year.~~

~~(f) If a minimum of five workers are not reported for the occupation in the entire state, no fringe benefit rate will be established for that occupation.~~

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine that whether the rate is incorrect. If found to be incorrect, the prevailing wage rate and fringe benefit rates will revert to the last published wage and fringe benefit rate for that occupation that was adopted via the rulemaking and public hearing process.

For temporary rates which have not been adopted via the rulemaking and the public hearing process, ~~an amended~~ a corrected rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or it is desired that the commissioner consider, to timely deliver such information to the commissioner.

~~(8) Wage information may be considered by the commissioner only if such information is delivered to the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.~~

~~(9) Within each district, the commissioner considers current wage rate information on file and sets the standard prevailing rate of wages for each craft, trade, occupation, or type of workers. Except as provided in (2), all rates shall be adopted in accordance with ARM 24.17.127.~~

AUTH: ~~18-2-409, 18-2-431, 39-3-202, MCA~~

IMP: ~~18-2-401, 18-2-402, 18-2-403, 18-2-411, 18-2-413, 18-2-414, 18-2-415,~~  
[Chap. 373, section 6, L. of 2013], MCA

REASON: There is reasonable necessity to amend the AUTH and IMP citations to reflect the reorganization of the rule and to clarify the authority for the rule.

5. The new rules as proposed to be adopted provide as follows:

NEW RULE I ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – BUILDING CONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations engaged in building construction services in each district. Although the commissioner establishes wage rates and fringe benefit rates including travel, zone pay, and per-diem allowance rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) The standard prevailing rate of wages is based upon an annual survey in each of the districts established in ARM 24.17.107, of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by 18-2-413, MCA, who are licensed or registered on February 1 of the year in which the survey is being conducted.

(3) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same wage, then

the higher of that wage or the highest applicable collectively bargained rate is the prevailing wage rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same wage, the weighted average wage rate is the prevailing wage rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the prevailing wage rate is the highest applicable collectively bargained rate for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement does not exist for the occupation in that district, a weighted average wage rate for the district will be computed using data submitted from that district and its contiguous districts.

(e) If contiguous district data do not sum to a minimum of 10 workers, a statewide weighted average wage rate will be calculated for that occupation.

(f) If a minimum of 10 workers is not reported for the occupation statewide, no wage rate will be established for that occupation.

(4) Based on survey data collected by the department for each district, the commissioner will compile fringe benefit information for a given occupation that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same dollar value of fringe benefits, then the higher of that dollar value of fringe benefits, the highest applicable collectively bargained rate, or other predominate, established trade organization fringe benefit funds, plans, or programs is the prevailing fringe benefit rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same fringe benefit rate, the weighted average fringe benefit rate is the prevailing fringe benefit rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the district prevailing fringe benefit rate is the higher of the highest applicable collectively bargained fringe benefit rate or other predominate, established trade organization fringe benefit funds, plans, or programs for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement or other predominate, established trade organization funds, plans, or programs does not exist for the occupation in that district, a weighted average fringe benefit rate for the district will be computed using data submitted from that district and all contiguous districts.

(e) If contiguous district fringe benefit data do not sum to a minimum of 10 workers, a statewide weighted average fringe benefit rate will be calculated for that occupation.



(f) If a minimum of 10 workers are not reported for the occupation statewide, no fringe benefit rate will be established for that occupation.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or desires that the commissioner consider, to timely deliver such information to the commissioner.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-413, [Chap. 373, section 6, L. of 2013], MCA

## NEW RULE II ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – NONCONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations engaged in nonconstruction services in each district. Although the commissioner establishes wage rates and fringe benefit rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) The standard prevailing rate of wages is based upon an annual survey in each of the districts established in ARM 24.17.107 of employers pursuant to 18-2-415, MCA, as known to the department as of February 1 of the year in which the survey is being conducted.

(3) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same wage, then

the higher of that wage or the highest applicable collectively bargained rate is the prevailing wage rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same wage, then the higher of the weighted average wage rate, or the highest applicable collectively bargained rates is the prevailing wage rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the prevailing wage rate is the highest applicable collectively bargained rate for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement does not exist for the occupation in that district, a weighted average wage rate for the district will be computed using data submitted from that district and its contiguous districts.

(e) If contiguous district data do not sum to a minimum of 10 workers, a statewide weighted average wage rate will be calculated for that occupation.

(f) If a minimum of 10 workers is not reported for the occupation statewide, no wage rate will be established for that occupation.

(4) Based on survey data collected by the department for each district, the commissioner will compile fringe benefit information for a given occupation that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same dollar value of fringe benefits, then the higher of that rate or the highest applicable collectively bargained rate is the prevailing fringe benefit rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same fringe benefit rate, then the higher of the weighted average fringe benefit rate or the highest applicable collectively bargained rate is the prevailing fringe benefit rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the district prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement does not exist for the occupation, a weighted average fringe benefit rate for the district will be computed using data submitted from that district and all contiguous districts.

(e) If contiguous district fringe benefit data do not sum to a minimum of 10 workers, a statewide weighted average fringe benefit rate will be calculated for that occupation.

(f) If a minimum of 10 workers are not reported for the occupation statewide, no fringe benefit rate will be established for that occupation.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or desires that the commissioner consider, to timely deliver such information to the commissioner.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-415, [Chap. 373, section 6, L. of 2013], MCA

### NEW RULE III ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – HEAVY CONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations engaged in heavy construction services statewide. Although the commissioner establishes wage rates and fringe benefit rates, including travel, zone pay, and per-diem allowance rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) The commissioner uses various data sources to determine the standard prevailing rate of wages.

(a) The standard prevailing rate of wages may be based upon an annual statewide survey of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by 18-2-414, MCA, who are licensed or registered on February 1 of the year in which the survey is being conducted.

(b) The standard prevailing rate of wages may instead be based upon applicable federal Davis-Bacon Act rates for heavy construction services in effect on a statewide basis for Montana as of September 1 of that year.

(c) If, with respect to any given occupation, there is a difference in the standard prevailing rate of wages (including the value of fringe benefits) surveyed for under this section, and the applicable federal Davis-Bacon Act rates in effect

statewide for heavy construction services in Montana as of September 1 of that year, the commissioner shall adopt the higher of the two as the standard prevailing rate of wages.

(3) Based on survey data collected by the department statewide, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) If a minimum of 40 or more workers are reported for the occupation statewide and 50 percent or more of those workers receive the same wage, then the statewide surveyed prevailing wage rate for that occupation is the higher of:

- (i) that wage; or
- (ii) the highest applicable collectively bargained rate.

(b) If 40 or more workers are reported for the occupation statewide but 50 percent of those workers are not paid the same wage, then the statewide surveyed prevailing wage rate for that occupation is the higher of:

- (i) the weighted average wage; or
- (ii) the highest applicable collectively bargained rate.

(c) If less than 40 workers are reported for the occupation statewide, the surveyed prevailing wage rate is the highest applicable collectively bargained rate for that occupation statewide.

(d) If less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for heavy construction services for the occupation in effect statewide for Montana on September 1 of that year is the prevailing wage rate for that occupation.

(e) No wage rate will be established for an occupation where:

- (i) a minimum of 40 workers is not reported statewide;
- (ii) a collective bargaining agreement does not exist; and
- (iii) a federal Davis-Bacon Act rate for heavy construction services has not been established on a statewide basis as of September 1 of that year.

(4) Based on survey data collected by the department statewide, the commissioner will compile fringe benefit information for a given occupation statewide that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) If a minimum of 40 or more workers are reported for the occupation statewide and 50 percent or more of those workers receive the same dollar value of fringe benefits, then the statewide surveyed prevailing fringe benefit rate for that occupation is the higher of:

- (i) that fringe benefit; or
- (ii) the highest applicable collectively bargained fringe benefit rate.

(b) If 40 or more workers are reported for the occupation statewide but 50 percent of those workers are not paid the same fringe benefit rate, the surveyed prevailing fringe benefit rate for that occupation statewide is the higher of:

- (i) the weighted average fringe benefit rate; or
- (ii) the highest applicable collectively bargained fringe benefit rate.
- (c) If less than 40 workers are reported for the occupation statewide, the surveyed prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation statewide.
- (d) If less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for heavy construction services for the occupation in effect statewide for Montana on September 1 of that year is the surveyed prevailing fringe benefit rate for that occupation.
- (e) No fringe benefit rate will be established for an occupation where:
  - (i) a minimum of 40 workers is not reported statewide;
  - (ii) a collective bargaining agreement does not exist; and
  - (iii) a federal Davis-Bacon Act rate for heavy construction services has not been established on a statewide basis as of September 1 of that year.
- (5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.
  - (a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.
  - (b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.
- (6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.
- (7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or desires that the commissioner consider, to timely deliver such information to the commissioner.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-414, [Chap. 373, section 6, L. of 2013], MCA

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to [mikesmith@mt.gov](mailto:mikesmith@mt.gov), and must be received no later than 5:00 p.m., September 23, 2013.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, have been complied with. The prime sponsor of HB 464 was contacted on May 15, 2013, by e-mail.

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 12, 2013.